

Senate Engrossed

State of Arizona
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2001

CHAPTER 80

SENATE BILL 1046

AN ACT

AMENDING SECTIONS 6-561, 6-581, 6-853, 6-943, 6-945, 6-1302, 44-281 AND
44-291; RELATING TO FINANCIAL INSTITUTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 6-561, Arizona Revised Statutes, is amended to
3 read:

4 6-561. Purpose and conditions of loans

5 A. A credit union may make loans, including lines of credit, to
6 members for the purposes and on the conditions as the bylaws provide. The
7 board of directors shall establish written policies with respect to the
8 granting of loans including the terms, conditions and acceptable forms of
9 security.

10 B. No person, except another credit union, may become indebted,
11 directly or indirectly, to the credit union for more than ten per cent of the
12 credit union's capital or two hundred dollars, whichever is greater. This
13 limit does not apply to loans which are fully secured by assignment of share
14 or deposit accounts in the credit union.

15 C. ~~An application for a loan shall be in writing and shall state the~~
16 ~~purpose for the loan, the security and other information required by the~~
17 ~~credit committee or credit manager. Each loan shall be evidenced by a written~~
18 ~~document.~~

19 D. A member may repay a loan or outstanding balance on a line of
20 credit prior to maturity in whole or in part on any business day without
21 penalty.

22 Sec. 2. Section 6-581, Arizona Revised Statutes, is amended to read:
23 6-581. Transfers to regular reserve

24 A. ~~At the end of each accounting period, but not less frequently than~~
25 ~~quarterly, the gross earnings of a credit union shall be determined. From~~
26 ~~this amount, there shall be set aside, as a regular reserve against losses,~~
27 ~~amounts in accordance with the schedule set by the share insuring~~
28 ~~organization. Such determinations and transfers shall be made prior to THE~~
29 ~~CREDIT UNION SHALL SET ASIDE THE AMOUNTS BEFORE the declaration or payment~~
30 ~~of any dividends.~~

31 B. ~~The board of directors may increase, or if the reserve equals or~~
32 ~~exceeds the requirement of PRESCRIBED IN subsection A, decrease, the~~
33 ~~proportion of gross earnings AMOUNT to be set aside.~~

34 Sec. 3. Section 6-853, Arizona Revised Statutes, is amended to read:
35 6-853. Certificate required; exceptions

36 A. A person shall not engage in the trust business without first
37 obtaining a certificate from the superintendent except as provided by
38 subsection B or C of this section, or by section 6-852, subsection C.

39 B. A bank, if a member of the federal deposit insurance corporation
40 and otherwise authorized under the laws of the United States or, this state
41 OR ANY OTHER STATE to engage in the trust business in this state, may engage
42 in such THAT business as a bank without obtaining a certificate under this
43 chapter, and shall not be subject to this article, except for section 6-859,
44 subsection A and section 6-860.

1 C. IF a savings and loan association, ~~if OR SAVINGS BANK IS~~ a member
2 of the federal deposit insurance corporation or ~~such other instrumentality~~
3 ~~of, or corporation chartered by, the United States as may be established for~~
4 ~~the purpose of insuring the accounts of savings and loan associations, and~~
5 otherwise IS authorized under the laws of the United States or, this state
6 OR ANY OTHER STATE to engage in the trust business in this state, THE SAVINGS
7 AND LOAN ASSOCIATION OR SAVINGS BANK may engage in that business as a savings
8 and loan association OR SAVINGS BANK without obtaining a certificate under
9 this chapter and is not subject to this article, except for section 6-859,
10 subsection A and section 6-860.

11 Sec. 4. Section 6-943, Arizona Revised Statutes, is amended to read:
12 6-943. Licensing of mortgage bankers required; qualifications;
13 application; bond; fees; renewal

14 A. A person shall not act as a mortgage banker if he is not licensed
15 under this article.

16 B. The superintendent shall not grant a mortgage banker's license to
17 a person, other than a natural person, who is not registered to do business
18 in this state on the date of application for a license. The superintendent
19 shall not issue a mortgage banker's license or a renewal of such a license
20 to an applicant unless he THE APPLICANT meets all of the requirements
21 prescribed in subsection C of this section. The superintendent shall
22 determine whether the applicant meets the requirements based on the
23 application, and evidence presented at a hearing, if any, or any other
24 evidence that the superintendent may have regarding qualifications of the
25 applicant.

26 C. In order to qualify for a mortgage banker license or a renewal of
27 such a license an applicant shall:

28 1. Have not fewer than three years' experience in the business of
29 making mortgage banking loans or equivalent lending experience in a related
30 business. If the applicant is a person other than a natural person, the
31 responsible individual shall meet this requirement.

32 2. Have engaged or intend to engage in the business of making mortgage
33 loans or mortgage banking loans.

34 3. Either:

35 (a) Be authorized to do business with any of the following:

36 (i) The federal housing administration.

37 (ii) The veterans administration.

38 (iii) The federal national mortgage association.

39 (iv) The federal home loan mortgage corporation.

40 (b) Notwithstanding paragraph 5 OF THIS SUBSECTION, at all times have
41 and maintain a net worth of not less than two hundred fifty thousand dollars.

42 4. Provide the superintendent with a current audited financial
43 statement or that of its parent company prepared by an independent certified
44 public accountant in accordance with generally accepted accounting principles
45 including:

1 (a) The certified public accountant's opinion as to the fairness of
2 the presentation in conformity with generally accepted accounting principles.

3 (b) A balance sheet prepared within the previous six months and
4 certified by the licensee. The superintendent may require a more recent
5 balance sheet.

6 (c) A statement of operations and retained earnings and a statement
7 of changes in financial position provided the applicant has commenced
8 operations.

9 (d) Notes to the financial statement if applicable.

10 5. At all times have and maintain a net worth of not less than one
11 hundred thousand dollars.

12 D. A person shall make an application for a license or for a renewal
13 of a license in writing on the forms, in the manner and accompanied by the
14 information prescribed by the superintendent including the requirements
15 prescribed in subsection C of this section. The superintendent may require
16 additional information on the experience, background, honesty, truthfulness,
17 integrity and competency of the applicant and any responsible individual
18 designated by the applicant. If the applicant is a person other than a
19 natural person, the superintendent may require such information as to the
20 honesty, truthfulness, integrity and competency of any officer, director,
21 shareholder, member, partner, trustee, employee or other interested party of
22 the association, corporation or group.

23 E. The nonrefundable application fee and annual renewal fee shall be
24 as prescribed in section 6-126. The nonrefundable application fee shall
25 accompany each application for an original license only.

26 F. If a licensee is a person other than a natural person, the license
27 issued to it entitles all officers, directors, members, partners, trustees
28 and employees of the licensed corporation, partnership, association or trust
29 to engage in the mortgage banking business if one officer, director, member,
30 partner, employee or trustee of the person is designated in the license as
31 the individual responsible for the person under this article. If a licensee
32 is a natural person, the license entitles all employees of the licensee to
33 engage in the mortgage banking business. If the natural person is not a
34 resident of this state, an employee of the licensee shall be designated in
35 the license as the individual responsible for such THE licensee under the
36 provisions of this article. For the purposes of this article an employee
37 does not include an independent contractor. For the purposes of this
38 article, a responsible individual shall be a resident of this state, shall
39 be in active management of the activities of the licensee governed by this
40 article and shall have not less than three years' experience in the business
41 of making mortgage banking loans or equivalent experience in a related
42 business.

43 G. A licensee shall notify the superintendent that its responsible
44 individual will cease to be in active management of the licensee within ten
45 days of learning that fact. Not less MORE than ninety days after the

1 superintendent receives the notice, the licensee shall place itself under the
 2 active management of a qualified responsible person and notify the
 3 superintendent. If the licensee is not placed under active management of a
 4 qualified responsible individual and if notice is not received by the
 5 superintendent within the ninety day period, the license of the licensee
 6 expires.

7 H. Every person licensed as a mortgage banker shall deposit with the
 8 superintendent, before doing business as a mortgage banker, a bond executed
 9 by the licensee as principal and a surety company authorized to do business
 10 in this state as surety. The bond shall be conditioned on the faithful
 11 compliance of the licensee, including his directors, officers, members,
 12 partners, trustees and employees, with this article. Only one bond is
 13 required for a person, firm, association or corporation irrespective of the
 14 number of officers, directors, members, partners or trustees who are employed
 15 by or are members of the firm, association or corporation. The bond is
 16 payable to any person injured by the wrongful act, default, fraud or
 17 misrepresentation of the licensee and to this state for the benefit of any
 18 ~~such person~~ injured PERSON. ~~Such~~ THE coverage shall be maintained in the
 19 minimum amount prescribed in this subsection, computed on a base consisting
 20 of the total assets of the licensee plus the unpaid balance of loans which
 21 it has contracted to service for others as of the end of the licensee's
 22 fiscal year.

23 Base	Minimum Bond
24 Not over \$1,000,000	\$25,000 for the first \$500,000 plus 25 \$5,000 for each \$100,000 or fraction 26 thereof over \$500,000
27 \$1,000,001 to \$10,000,000	\$50,000 plus \$5,000 for each \$1,800,000 28 or fraction thereof over \$1,000,000
29 \$10,000,001 to \$100,000,000	\$75,000 plus \$5,000 for each \$18,000,000 30 or fraction thereof over \$10,000,000
31 \$100,000,001 and over	\$100,000

32 No suit may be commenced on the bond after the expiration of one year
 33 following the commission of the act on which the suit is based, except that
 34 claims for fraud or mistake are limited to the limitation period provided in
 35 section 12-543, paragraph 3. If any injured person commences an action for
 36 a judgment to collect on the bond, the injured person shall notify the
 37 superintendent of the action in writing at the time of the commencement of
 38 the action and shall provide copies of all documents relating to the action
 39 to the superintendent on request.

40 I. Notwithstanding subsection H of this section, the bond required
 41 shall be twenty-five thousand dollars for licensees whose investors are
 42 limited solely to institutional investors.

43 J. For purposes of subsection I of this section:

44 1. "Institutional investor" means a state or national bank, a state
 45 or federal savings and loan association, a state or federal savings bank, a

1 state or federal credit union, a federal government agency or
2 instrumentality, a quasi-federal government agency, a financial enterprise,
3 a licensed real estate broker or salesman, a profit sharing or pension trust,
4 or an insurance company.

5 2. "Investor" means any person who directly or indirectly provides
6 funds to a mortgage banker which funds are, or are intended to be, used in
7 the making of a loan, and any person who purchases a loan, or any interest
8 therein, from a mortgage banker or in a transaction that has been directly
9 or indirectly arranged or negotiated by a mortgage banker.

10 K. Notwithstanding section 35-155, in lieu of the bond described in
11 this section, an applicant for a license or a licensee may deposit with the
12 superintendent a deposit in the form of cash or alternatives to cash in the
13 amount prescribed in subsection H or I of this section, as applicable. The
14 superintendent may accept any of the following as an alternative to cash:

15 1. Certificates of deposit or investment certificates which are
16 payable or assigned to the state treasurer, issued by banks or savings banks
17 doing business in this state and fully insured by the federal deposit
18 insurance corporation or any successor institution.

19 2. Certificates of deposit, investment certificates or share accounts
20 which are payable or assigned to the state treasurer, issued by a savings and
21 loan association doing business in this state and fully insured by the
22 federal deposit insurance corporation or any successor institution.

23 3. Certificates of deposit, investment certificates or share accounts
24 which are payable or assigned to the state treasurer, issued by a credit
25 union doing business in this state and fully insured by the national credit
26 union administration or any successor institution.

27 L. The superintendent shall deposit the cash or alternatives to cash
28 received under this section with the state treasurer. The state treasurer
29 shall hold the cash or alternatives to cash in the name of this state to
30 guarantee the faithful performance of all legal obligations of the person
31 required to post bond pursuant to this section. The person is entitled to
32 receive any accrued interest earned from the alternatives to cash. The state
33 treasurer may impose a fee to reimburse the state treasurer for
34 administrative expenses. The fee shall not exceed ten dollars for each cash
35 or alternatives to cash deposit and shall be paid by the applicant or
36 licensee. The state treasurer may prescribe rules relating to the terms and
37 conditions of each type of security provided by this section.

38 M. In addition to such other terms and conditions as the
39 superintendent prescribes by rule or order, the principal amount of the
40 deposit shall be released only on written authorization of the superintendent
41 or on the order of a court of competent jurisdiction. The principal amount
42 of the deposit shall not be released before the expiration of three years
43 from the first to occur of any of the following:

- 44 1. The date of substitution of a bond for a cash alternative.
45 2. The surrender of the license.

1 3. The revocation of the license.

2 4. The expiration of the license.

3 N. A licensee or an employee of the licensee shall not advertise for
4 or solicit mortgage banking business in any manner without using the name and
5 license number as issued on the mortgage banker's principal place of business
6 license, except that a licensee may also employ or refer to the commonly used
7 name and any trademarks or service marks of any affiliate. If a license is
8 issued in the name of a natural person, nothing in the advertising or
9 solicitation may imply that the license is in the name of another person or
10 entity. For the purpose of this subsection "advertise" does not include
11 business cards, radio and television advertising directed at national or
12 regional markets and promotional items except if those items contain rates
13 or terms on which a mortgage loan or mortgage banking loan may be obtained.

14 O. A licensee shall not employ any person unless the licensee:

15 1. Conducts a reasonable investigation of the background, honesty,
16 truthfulness, integrity and competency of the employee before hiring.

17 2. Keeps a record of the investigation for not less than two years
18 after termination.

19 P. The licensee is liable for any damage caused by any of his
20 employees while engaged in the business of making mortgage loans or mortgage
21 banking loans.

22 Q. A licensee shall comply with the requirements of section 6-114
23 relating to balloon payments.

24 R. Notwithstanding subsection C, paragraph 4 of this section,
25 licensees and applicants whose own resources are derived exclusively from
26 correspondent contracts between mortgage bankers and banks, savings banks,
27 trust companies, savings and loan associations, credit unions, profit sharing
28 or pension trusts, consumer lenders or insurance companies shall provide the
29 superintendent with a current financial statement or that of its parent
30 company prepared in accordance with generally accepted accounting principles
31 including:

32 1. A balance sheet prepared within the previous six months and
33 certified by the licensee. The superintendent may require a more recent
34 balance sheet.

35 2. A statement of operations and retained earnings and a statement of
36 changes in financial position provided the applicant has commenced
37 operations.

38 3. Notes to the financial statement if applicable.

39 S. In addition to the grounds specified in section 6-945, subsection
40 A, failure of a licensee to operate the business of making mortgage loans or
41 mortgage banking loans for a continuous period of twelve months or more shall
42 constitute grounds for revocation of such license. The superintendent, upon
43 good cause shown, may extend the time for operating such business for a
44 single fixed period which shall not exceed twelve months.

45 Sec. 5. Section 6-945, Arizona Revised Statutes, is amended to read:

1 6-945. Denial, suspension or revocation of licenses

2 A. The superintendent may deny a license to a person or suspend or
3 revoke a license if the superintendent finds that an applicant or licensee:

4 1. Is insolvent as defined in section 47-1201.

5 2. Has shown that he is not a person of honesty, truthfulness and good
6 character.

7 3. Refuses to permit an examination by the superintendent of the
8 licensee's books and affairs or refuses or fails, within a reasonable time,
9 to furnish any information or make any report that may be required by the
10 superintendent.

11 4. Has been convicted in any state of a felony or any crime of
12 INVOLVING breach of trust or dishonesty.

13 5. Has had a final judgment entered against him THE APPLICANT OR
14 LICENSEE in a civil action upon ON grounds of fraud, deceit or
15 misrepresentation and the conduct on which the judgment is based indicates
16 that it would be contrary to the interest of the public to permit such person
17 to be licensed or to control or manage a licensee.

18 6. Has had an order entered against him THE APPLICANT OR LICENSEE
19 involving fraud, deceit or misrepresentation by any administrative agency of
20 this state, the federal government or any other state or territory of the
21 United States and that the facts relating to the order indicate that it would
22 be contrary to the interest of the public to permit such THE person to be
23 licensed or to control or manage a licensee.

24 7. Has violated any applicable law, rule or order.

25 B. If any person to whom a license is issued or who has applied for
26 a license under this article is indicted or informed against for forgery,
27 embezzlement, obtaining money under false pretenses, extortion, criminal
28 conspiracy to defraud, or a like offense or offenses, and a certified copy
29 of the indictment or information or other proper evidence of such indictment
30 or information is filed with the superintendent, the superintendent may
31 suspend the license issued to the licensee or refuse to grant a license to
32 an applicant pending trial on the indictment or information.

33 C. If a licensee is other than a natural person, it is sufficient
34 cause for the DENIAL, suspension or revocation of the license if an officer,
35 director, member, partner, trustee, employee, while acting in the course of
36 the mortgage banker business, or person entitled to vote more than twenty per
37 cent of the outstanding voting shares of the licensed corporation,
38 partnership, association or trust has acted or failed to act in the same
39 manner as would be cause for suspending or revoking a license of the party
40 as an individual. If a licensee is a natural person, it is sufficient cause
41 for the suspension or revocation of the license if an employee of the person
42 has acted or failed to act in the course of the mortgage banker business of
43 the licensee in the same manner as would be cause for suspending or revoking
44 a license of the party as an owner.

1 D. The superintendent shall grant or deny a license within one hundred
2 twenty days after receipt of the completed application and fees.

3 Sec. 6. Section 6-1302, Arizona Revised Statutes, is amended to read:

4 6-1302. Scope of chapter; exemptions

5 A. Any person who acts as an advance fee loan broker shall register
6 with the superintendent as provided in this chapter. A person who is not
7 exempt under subsection B of this section and who advertises for, solicits
8 or ~~holds himself out as~~ PURPORTS TO BE willing to make or procure a loan or
9 extension of credit for an advance fee is presumed to be engaged in the
10 business of an advance fee loan broker.

11 B. This chapter does not apply to:

12 1. Individuals not regularly engaged in the business of making or
13 procuring loans or extensions of credit for an advance fee.

14 2. A person doing business as permitted by any law of any state or of
15 the United States relating to banks, savings banks, trust companies, savings
16 and loan associations, credit unions, insurance companies, consumer lenders
17 or profit sharing and pension trusts.

18 3. A person licensed as a mortgage broker, a mortgage banker or a
19 commercial mortgage banker pursuant to chapter 9 of this title.

20 4. A PERSON WHO MAKES A LOAN WITH THE PERSON'S OWN MONEY OR FOR THE
21 PERSON'S OWN INVESTMENT.

22 ~~4.~~ 5. A person licensed as a real estate broker or salesperson
23 pursuant to title 32, chapter 20, article 2.

24 ~~5.~~ 6. A person who is licensed to practice law in this state but who
25 is not actively and principally engaged in the business of making or
26 procuring loans or extensions of credit, if this person renders services in
27 the course of his THE PERSON'S practice as an attorney.

28 ~~6.~~ 7. An institutional investor as defined in section 6-971 unless
29 the institutional investor advertises for, solicits or holds himself out as
30 willing to make or procure for an advance fee a loan or extension of credit
31 other than a commercial mortgage loan as defined in section 6-971.

32 ~~7.~~ 8. This state including any political subdivision of this state.

33 ~~8.~~ 9. The United States or any department or agency of the United
34 States.

35 Sec. 7. Section 44-281, Arizona Revised Statutes, is amended to read:

36 44-281. Definitions

37 In this article, unless the context otherwise requires:

38 1. "Administrator" means the superintendent of banks.

39 2. "Cash sale price" means the price stated in a retail installment
40 contract for which the seller would have sold to the buyer, and the buyer
41 would have bought from the seller, the motor vehicle which is the subject
42 matter of the retail installment contract, if such sale had been a sale for
43 cash instead of a retail installment transaction. The cash sale price may
44 include charges for accessories and their installation and for delivery, and
45 servicing, repairing or improving the motor vehicle, and for charges for

1 other costs THAT ARE necessary or incidental to the transaction which AND
2 THAT the seller furnishes or agrees to pay on behalf of the buyer, including
3 taxes, assessor's fees, license fees, and fees for filing, recording or
4 otherwise perfecting or releasing a reserved title or lien, and may include
5 a reasonable charge for THE seller's services in connection therewith.

6 3. "Dealer" means any person who in any year sells on a noncash basis
7 three or more motor vehicles at retail.

8 4. "Finance charge" means the amount agreed upon between the buyer and
9 the seller, as limited herein, which in determining the cost of the motor
10 vehicle is added to the aggregate of the following: The cash sale price and
11 the amount, if any, included for insurance and other benefits where a
12 separate cost is assigned thereto.

13 5. "Holder" of a retail installment contract means the retail seller
14 of the motor vehicle under or subject to the contract or, if the contract is
15 purchased by a sales finance company or other assignee, the sales finance
16 company or other assignee.

17 6. "Motor vehicle" means any self-propelled device in or by which any
18 person or property is or may be transported or drawn on a public highway,
19 except:

20 (a) Devices which THAT move upon or are guided by a track or travel
21 through the air.

22 (b) The following, if not designed primarily for highway
23 transportation, but which may incidentally be operated on a public highway:

24 (i) Tractors.

25 (ii) Buses.

26 (iii) Trucks.

27 (iv) Power shovels.

28 (v) Road machinery.

29 (vi) Agricultural machinery.

30 7. "Person" means an individual, partnership, association, trust,
31 corporation, or other legal entity.

32 8. "Retail buyer" or "buyer" means a person who buys a motor vehicle
33 from a retail seller, not for the purpose of resale, and who executes a
34 retail installment contract in connection therewith.

35 9. "Retail installment contract" or "contract":
36

37 (a) Means an agreement, entered into in this state, pursuant to which
38 the title to or a lien upon the motor vehicle, which is the subject matter
39 of a retail installment transaction, is retained or taken by a retail seller
40 from a retail buyer as security for the buyer's obligation.

41 (b) Includes:

42 (i) A conditional sales contract and a contract for the bailment or
43 leasing of a motor vehicle by which the bailee or lessee contracts to pay as
44 compensation for its use a sum substantially equivalent to or in excess of
45 its value and by which it is agreed that the bailee or lessee is bound to
become, or has the option of becoming, the owner of the motor vehicle for no

1 other or a nominal consideration upon full compliance with the provisions of
2 the contract.

3 (ii) A secondary motor vehicle finance transaction.

4 10. "Retail installment transaction" means any transaction evidenced
5 by a retail installment contract entered into between a retail buyer and a
6 retail seller wherein the retail buyer buys a motor vehicle from the retail
7 seller at a cost payable in one or more deferred installments. The cash sale
8 price of the motor vehicle, the amount included for insurance if a separate
9 charge is made and the finance charge shall together constitute the cost of
10 the motor vehicle.

11 11. "Retail seller" or "seller" means a person who sells a motor
12 vehicle to a retail buyer for purposes other than resale under or subject to
13 a retail installment contract. For the purposes of paragraph 13 of this
14 section "seller" means a person who sells and retains the use of the motor
15 vehicle.

16 12. "Sales finance company":

17 (a) Means a person engaged, in whole or in part, in the business of
18 purchasing retail installment contracts from one or more retail sellers.

19 (b) Includes a ~~retail seller~~ PERSON engaged, in whole or in part, in
20 the business of creating and OR holding retail installment contracts which
21 THAT exceed a total aggregate outstanding indebtedness of twenty-five
22 thousand dollars.

23 (c) Does not include the pledgee of an aggregate number of retail
24 installment contracts to secure a bona fide loan thereon.

25 13. "Secondary motor vehicle finance transaction":

26 (a) Means any contract that includes provisions for either:

27 (i) Obtaining a security interest in or lien on a motor vehicle other
28 than in connection with the sale of that motor vehicle.

29 (ii) The sale or conditional sale of a motor vehicle and the seller's
30 right to retain use of the motor vehicle after the sale or conditional sale.

31 (b) Includes any conditional sales contract or contract for the
32 bailment or leasing of a motor vehicle in which the bailee or lessee agrees
33 to pay for use of the motor vehicle and the bailee or lessee is required to
34 become or has the option of becoming the owner of the vehicle for any or no
35 compensation.

36 (c) Does not include any commercial transaction as defined in section
37 44-291.

38 Sec. 8. Section 44-291, Arizona Revised Statutes, is amended to read:

39 44-291. Computation of interest; prepayment rebate; additional
40 charges; secondary motor vehicle finance transaction;
41 definitions

42 A. Except as provided in subsections G and H of this section, under
43 a retail installment contract it is lawful to charge and receive interest not
44 to exceed the maximum rate set by contract.

1 B. The finance charge may be computed either at a single annual
2 percentage rate using the actuarial method or it may be precomputed on the
3 assumption that all payments will be made in the amount and on the dates
4 scheduled. If the finance charge is precomputed, the fact that payments are
5 made either before or after the date due does not affect the amount of
6 finance charge which the seller or holder may charge or receive. If the
7 precomputed contract balance is prepaid in full by cash, a new loan,
8 refinancing or otherwise, the seller or holder shall charge only for the
9 finance charge which has been earned and unpaid late payment or delinquency
10 charges as of the date of prepayment, and the buyer shall receive a rebate
11 of that portion of the precomputed finance charge which is the difference
12 between the total precomputed finance charges and the charges at the contract
13 finance charge computed on the unpaid principal balance based on the number
14 of days or months to maturity based on either a thirty day month - three
15 hundred sixty day year or daily three hundred sixty-five or three hundred
16 sixty-six day year on the number of days remaining to final maturity, except
17 that the number of days shall be the same as that used in calculating the
18 finance charge as prescribed in subsection C of this section. The amount of
19 such rebate shall not be computed pursuant to the method commonly known as
20 the "rule of 78's". To simplify the calculation of earned finance charge,
21 it is permissible to assume that all payments were made as originally
22 scheduled or as otherwise mutually agreed.

23 C. It is permissible to calculate a finance charge on an annual basis
24 of twelve months of thirty days each, or on a daily basis if a day is counted
25 as 1/360th, 1/365th, or 1/366th of a year, as the buyer and seller or holder
26 may agree by writing. The seller or holder may also charge a late payment
27 or delinquency charge, in addition to all finance charges permitted, on each
28 installment not paid in full upon the tenth day after its due date in an
29 amount not to exceed five per cent of the unpaid balance of the installment
30 or ten dollars, whichever is less.

31 D. In addition to the cash sale price of the vehicle, the seller may
32 charge for any insurance premiums incurred in connection with the retail
33 installment transaction.

34 E. Notwithstanding the late payment or delinquency charge provided in
35 subsection C of this section, in a commercial transaction, the seller or
36 holder may charge a late payment or delinquency charge, in addition to all
37 finance charges permitted, on each installment not paid in full upon the
38 tenth day after its due date in an amount of not more than five per cent of
39 the unpaid balance of the installment.

40 F. Any sales finance company may purchase or acquire or agree to
41 purchase or acquire from any seller any contract on such terms and conditions
42 as may be agreed upon between them. Filing of the assignment notice to the
43 buyer of the assignment and any requirement that the holder maintain dominion
44 over the payments or the motor vehicle if repossessed is not necessary to the
45 validity of a written assignment of a contract as against creditors,

1 subsequent purchasers, pledgees, mortgagees and lien claimants of the seller.
2 Unless the buyer has notice of the assignment of his contract, payment under
3 the contract made by the buyer to the last known holder of such contract is
4 binding upon all subsequent holders.

5 G. If the retail installment contract is a secondary motor vehicle
6 finance transaction, the seller, bailor, LENDER or lessor shall determine the
7 annual secondary motor vehicle finance rate and all charges relating to the
8 sale, conditional sale, bailment or lease and repurchase of the vehicle. The
9 seller, bailor, LENDER or lessor shall calculate the annual secondary motor
10 vehicle finance rate by multiplying the monthly secondary motor vehicle
11 finance rate by twelve. A retail installment contract that is a secondary
12 motor vehicle finance transaction is subject to the following maximum finance
13 rates on a secondary motor vehicle finance contract in the original principal
14 amount of:

15 1. Five hundred dollars or less, a monthly finance rate of seventeen
16 per cent.

17 2. More than five hundred dollars but not more than two thousand five
18 hundred dollars, a monthly finance rate of fifteen per cent.

19 3. More than two thousand five hundred dollars but not more than five
20 thousand dollars, a monthly finance rate of thirteen per cent.

21 4. More than five thousand dollars, a monthly finance rate of ten per
22 cent.

23 H. Except as the result of an accidental or bona fide error, if the
24 licensee charges, contracts for or receives any amount in excess of the
25 finance charges and other fees expressly permitted by this chapter, the
26 secondary motor vehicle transaction is voidable and the licensee has no right
27 to collect or receive any principal, finance charges or other fees in
28 connection with that secondary motor vehicle finance transaction. Any
29 secondary motor vehicle finance transaction that is made by a person who is
30 required to be licensed pursuant to this chapter but who is not licensed is
31 void, and the person has no right to collect, receive or retain any
32 principal, finance charges or other fees in connection with that secondary
33 motor vehicle finance transaction.

34 I. Section 44-287, subsection B does not apply to a secondary motor
35 vehicle finance transaction if the contract complies with the disclosure
36 requirements prescribed in federal law. The seller shall conspicuously
37 disclose in the contract the annual secondary motor vehicle finance rate.

38 J. For the purposes of this section:

39 1. "Actuarial method" means the method of allocating payments made on
40 a debt between the unpaid principal balance and the finance charge pursuant
41 to which a payment is applied first to the finance charge due and any
42 remainder is subtracted from the unpaid principal balance.

43 2. "Commercial transaction" means a transaction in which the motor
44 vehicle is intended by the borrower for use primarily for other than
45 personal, family or household purposes.

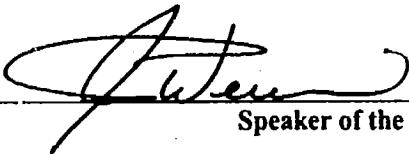
APPROVED BY THE GOVERNOR APRIL 9, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 2001.

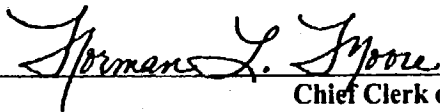
Passed the House April 03, 2001,

by the following vote: 51 Ayes,

9 Nays, 0 Not Voting



Speaker of the House



Chief Clerk of the House

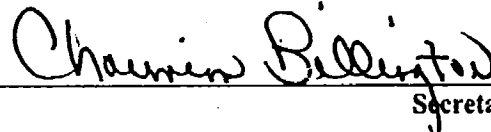
Passed the Senate January 29, 2001,

by the following vote: 26 Ayes,

3 Nays, 1 Not Voting



President of the Senate



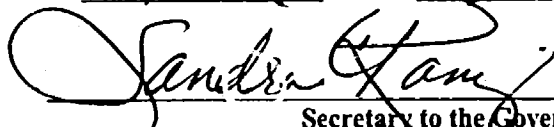
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

4 day of April, 2001,

at 11:58 o'clock A M.

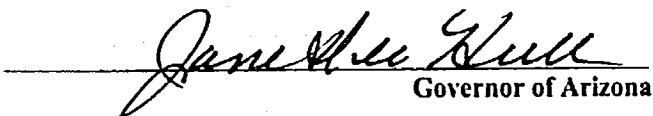


Secretary to the Governor

Approved this 9th day of

April, 2001,

at 11:20 o'clock 4 M.



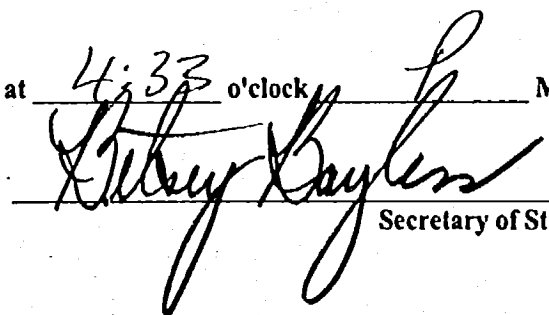
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 9 day of April, 2001,

at 4:33 o'clock P M.



Secretary of State

S.B. 1046